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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,198	11/04/2003	Victor Lee Walker	08168-053001	7120
20985	7590	07/07/2005	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			MITCHELL, KATHERINE W	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/702,198	WALKER ET AL.	
	Examiner	Art Unit	
	Katherine W. Mitchell	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/6/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims 1-12 drawn to an invention nonelected without traverse on 12/6/2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Specification***

2. The abstract of the disclosure submitted 5/19/2005 is accepted for its content, but there will be a problem if the case issues. The instructions:  
"Include clean abstract on a separate sheet as an attachment"  
would more than likely be scanned and included as the first line of the published abstract. Examiner has printed out the abstract, crossed out this line of instruction, and submitted it for scanning, which should correct the problem, but suggests submitting a new abstract without this instructional line to be certain it will not print.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

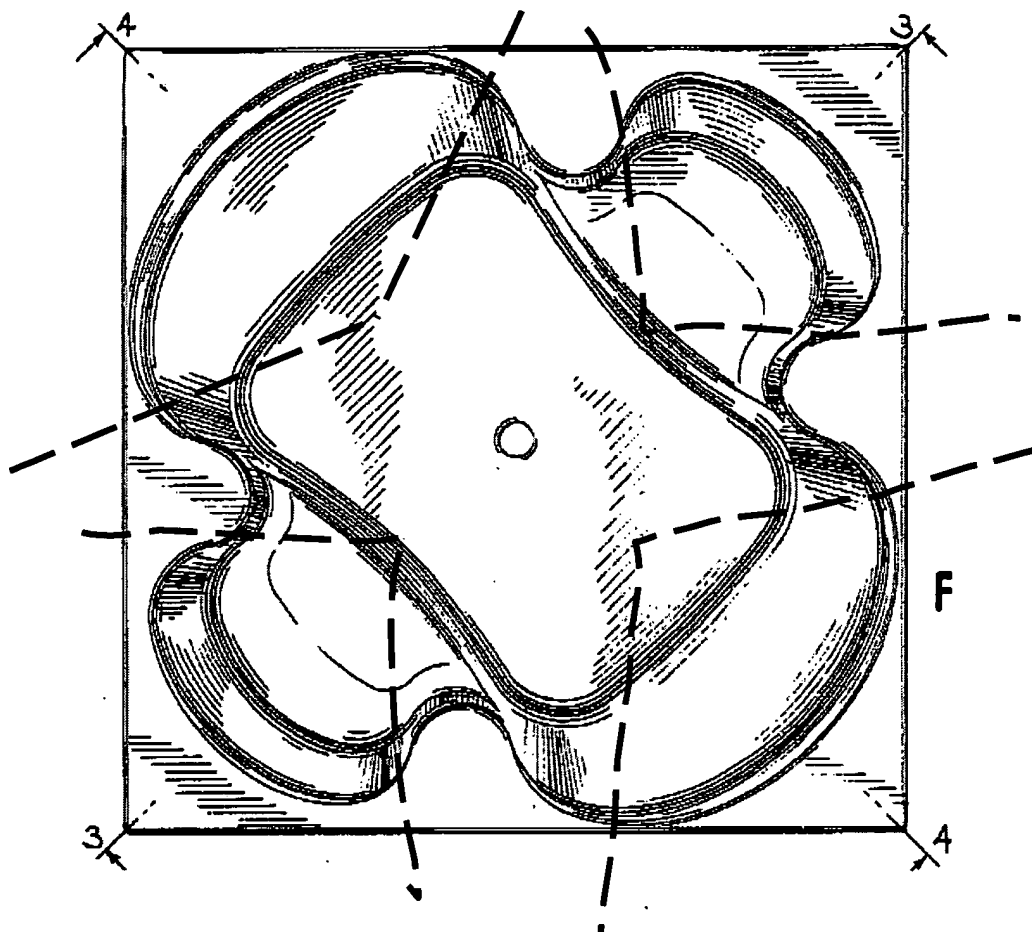
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Kohler, Jr., Des.280342, hereafter called Kohler.

Re claim 13: Kohler teaches a curvilinear spa shell comprising:

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- a top edge defining an interior of the spa shell, the edge having 4 rounded concave relative to the interior corners (see marked up Fig 2 below—4 corners are marked off by examiner in dashed lines) each corner having a radius that exceeds 12 inches (inherent, as the smaller opposed corners clearly are formed as seats, and a drain is also shown to give proportions clearly in excess of 12" radius for each curved corner) and
- four curved side walls that are convex relative to the interior, each wall connected between two of the concave corners (between areas marked off as dashed lines by examiner)
- Wherein the top edge is substantially symmetrical both about an axis that bisect the interior through two side walls (inherent in the figure shown) and
- substantially symmetrical about an axis that bisects the interior through two corners (inherent in the figure shown).



Re claim 14: The drainhole shown is considered a water feature, as water drains through it.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kohler in view of Mattson Jr. et al., USP 6395167, hereafter called Mattson. As discussed

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above, Kohler teaches all the elements except a filter section extending from one sidewall toward the interior. Mattson teaches a spa with a filter section that extends from one sidewall toward the interior in Figs 3 and 4, and col 4 lines 35-39 teach that the filter faceplate 20 has a raised, convex center 27. Col 5 lines 30-45 teach that the radius of curvature is 5", thus at least a portion of a filter section extends from one sidewall toward the interior. Therefore, it would have been obvious to one of ordinary skill in the art, having the teachings of Kohler and Mattson before him at the time the invention was made, to modify Kohler as taught by Mattson to include the filter of Mattson, in order to obtain clean water in the spa. The filter section extending toward the interior allows easy access to the filter elements for changing and cleaning, and the outward curve further prevents user's body part entrapment (col 6 lines 15-17). One would have been motivated to make such a combination because a more user-accepted device would have been obtained, as bathers do not like sitting in water that is visibly dirty, and the filter would trap particles that could damage any auxiliary equipment such as pumps and jets, which are frequently used on spas. One would install the filter in the sidewalls rather than the corners, as bathers sit in the corners, and would not want the filter unit located directly adjacent the bather, such as at a corner/section where bather would sit back onto the filter.

### ***Response to Arguments***

7. Applicant's arguments filed 5/19/2005 with respect to Kohler have been fully considered but they are not persuasive:

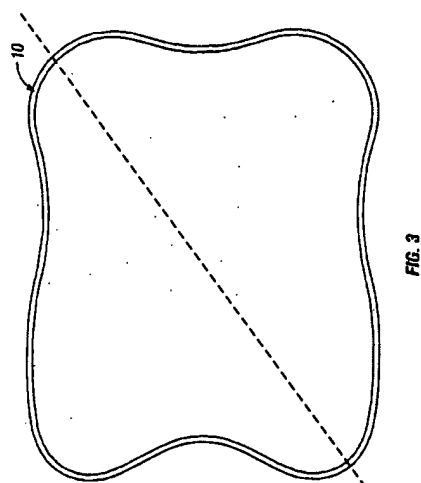
Examiner notes that applicant has claimed "**substantially** symmetrical".

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**sym-me-try** (sĭm'ĭ-trē) *noun*

1. Exact correspondence of form and constituent configuration on opposite sides of a dividing line or plane or about a center or an axis. See synonyms at proportion.
2. A relationship of characteristic correspondence, equivalence, or identity among constituents of an entity or between different entities: *the narrative symmetry of the novel*.<sup>1</sup>

Examiner considers Kohler's halves formed about the axis bisecting the interior through two side walls to be "substantially symmetric" (perfectly symmetrical halves are inverted with respect to each other), and considers Kohler's halves formed about the axis bisecting the interior through corners to be perfectly symmetric.



Note that applicant's invention is not perfectly symmetrical about an axis that bisects the interior through two corners, (dotted line added by examiner), which forms perfectly symmetrical halves that are inverted, in the exact same manner as Kohler is substantially symmetrical about an axis that bisects the interior through two side walls.

8. Applicant's arguments with respect to Kohler in view of DeSousa have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment. Examiner notes that applicant has claimed only a "filter section" and "extends from one side *toward* the interior", and does not require the entire filter or even the entire filter section to be in the interior.

### **Conclusion**

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<sup>1</sup>Excerpted from *The American Heritage Dictionary of the English Language, Third Edition* Copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from Lernout & Hauspie Speech Products N.V., further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

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9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W. Mitchell whose telephone number is 571-272-7069. The examiner can normally be reached on Mon - Thurs 10 AM - 8 PM.

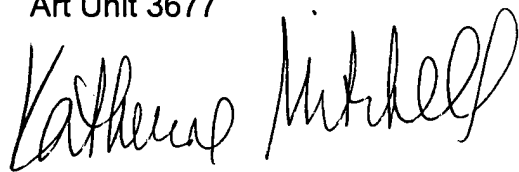
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Katherine W Mitchell  
Examiner  
Art Unit 3677

A handwritten signature in black ink, appearing to read "Katherine Mitchell", written in a cursive style.

Kwm  
7/1/2005